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U.S. FOREIGN POLICY AND INTERNATIONAL NARCOTICS CONTROL

HEARING

BEFORE THE

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

MARCH 16, 1988

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HEARING ON U.S. FOREIGN POLICY AND INTERNATIONAL NARCOTICS CONTROL

WEDNESDAY, MARCH 16, 1988

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL,
Washington, DC.

The Select Committee met, pursuant to call, at 2 p.m., in room 2203, Rayburn House Office Building, Hon. Charles B. Rangel, chairman, presiding.

Members present: Representatives Charles B. Rangel, Walter E. Fauntroy, Benjamin A. Gilman, and Lawrence Coughlin.

Staff present: Edward H. Jurith, staff director; Elliott A. Brown, minority staff director; George R. Gilbert, staff counsel; Michael J. Kelley, staff counsel; Rebecca Hedlund, professional staff; James Alexander, professional staff; Richard Baum, minority professional staff; and Robert Weiner, press officer.

Mr. RANGEL. The hearing will come to order. We have the U.S. Attorney from the Southern District of Florida before us, Mr. Leon Kellner, Walter Fauntroy, from the District of Columbia, and we'll have a very informal type of exchange, but I really want to thank you for taking time out to share some of your views with us.

It's a very unique situation, as you well know from newspaper stories for a de facto head of government to be indicted.

This is especially so when the Drug Enforcement Administration has, that is, Jack Lawn has shared with the Congress, that in his long years of service in this leadership responsibility, that he had no corroborating evidence to convince him that Noriega was involved in drug trafficking.

The intelligence community said, while allegations are there, that they didn't have anything to substantiate that the man was dealing in drugs.

And then all of a sudden, as a lawyer and former prosecutor, it appears as though the Deputy Secretary of State appears to be plea bargaining for your defendant, and if you really read some of the letters of commendation sent by Jack Lawn and his predecessors to Noriega, it just wouldn't surprise this gentleman from New York if they were not character witnesses at the trial.

So, I for one believe that this is an exciting period that we're living in, and if we're successful in getting rid of this person by indictment in Panama, I have a long list of people I will be suggesting we bring down to the Southern District of Florida.

But, I want you to know that you can perceive in sharing with us how you view this in view of my concerns, and Congressman

Fauntroy will speak for himself, he sort of believes our country was involved in supporting people who were involved in drug trafficking as a matter of our foreign policy, and that we may be turning over to your office the opportunity to clean that up too.

So, if we score heavily on Panama and Haiti, watch out for Mexico, Colombia, Peru and Bolivia.

I yield to the gentlemen from the District.

[Mr. Rangel's opening statement appears on p. 28.]

Mr. FAUNTROY. Thank you so much Mr. Chairman, and I want to express my appreciation to you for holding this hearing on U.S. Foreign Policy and International Narcotics Control, particularly in Panama, Haiti and Mexico.

The holding of this hearing is testimony to the recognition that many of the governments in the world, particularly those in the Western Hemisphere, are under the control and in danger of coming under the control of narcotics traffickers.

The utilization of nations in the Western Hemisphere as logistical centers for narcotics transshipment into our neighborhoods is a major source of danger to our citizenry and to our youth.

It is, perhaps, the pivotal cause of the instability and the insecurity in the Western Hemisphere. Certainly, recent events in Haiti, and Panama for that matter, demonstrate the relationship of political violence, corruption and narcotics trafficking.

In my capacity as Chairman of the Congressional Task Force on Haiti, I have viewed with growing alarm, as the Chairman has indicated, the increasing penetration of the narcotics cartel in Haiti.

I strongly believe that there is a chilling connection between the use of Haiti as a supply base for narcotics and the political murder and repression that happened in Haiti last November, a repression that continues today to crush the aspirations of the Haitian people for democratic and constitutional government.

My fear is that what we see in Haiti and Panama today may be the pattern and practice for a much wider scenario, a scenario that threatens the vital security interest of our nation.

It may well be that the manner in which we have conducted our foreign policy and intelligence operations requires serious reassessment and revision. Indeed, some of the relationships cultivated with certain people are viewed as intelligence assets against the Communist—involved key figures in the narcotics cartel.

It may well be, Mr. Chairman, that our national security priorities are wrong. Certainly, the people in many of our U.S. neighborhoods believe that the drug cartel is our number one national security threat, and I know I believe it also, and I really appreciate this opportunity to gain great understanding from Mr. Kellner and others.

Mr. RANGEL. Your statement will appear in the record in its entirety by unanimous consent. Once again we want to congratulate Mr. Kellner for the outstanding courage which he has demonstrated. It makes us proud to be partners in government, and me particularly, because I was a former Assistant U.S. Attorney.

You may proceed.

TESTIMONY OF LEON KELLNER, U.S. ATTORNEY, SOUTHERN DISTRICT OF FLORIDA

Mr. KELLNER. Thank you.

I will provide a summary, if I may, of my testimony. And again, I want to thank you for inviting me today, especially, Congressman Fauntroy's nice words.

I am afraid that you are maybe asking more of me than I can give you. I have a very limited role in all this, and the Southern District of Florida has a limited role, but in any way that I can help you, I will.

I believe, I truly believe, that the narcotics problem today is far and away the most serious crime problem facing this country.

Studies have shown that drug abuse and drug trafficking lay at the heart of much of the violent crime being committed in our major metropolitan areas.

In the past month, because of indictments returned in the Middle District of Florida, and the Southern District of Florida, and through testimony at hearings such as this, it is acknowledged that the narcotics problem is not simply a domestic problem, but one of international magnitude.

Those of us who enforce the law in the Southern District of Florida daily see the international dimension of the problem.

The Southern District of Florida sits astride the major cocaine importational route into the United States.

In the last fiscal year, law enforcement in south Florida seized in excess of 30 tons of cocaine. This amount represents 62 percent of the amount seized in the entire United States.

It is an unfortunate fact that even with the concerted efforts of Federal law enforcement agencies in cooperation with local and State authorities, the Southern District of Florida continues to be the number one entry point for cocaine into this country.

The seizures made in the Southern District of Florida are many times the quantity seized anywhere else in the country. Cocaine seizures in excess of 1,000 pounds in our District are not uncommon.

Before I came here, I called DEA and asked them, off the top of their head for the past few months, give me the amounts of the largest seizures that we have had, just in the past few months. Some of them, of course, I knew.

We have seized individual shipments in excess of 8,000 pounds, four tons of cocaine in one shipment, which is the largest ever recorded as a single seizure, 6,000 pounds in one case, and two of 3,000 pounds.

Moreover, the largest single cocaine seizure in the history of Chicago, 5,000 pounds, was the result of a controlled delivery from the port of Miami.

I want to digress for a moment and explain why I mention these numbers, and why I'm so concerned about them.

We all acknowledge that we are not seizing everything or close to everything that's coming in. What these numbers tell me, and they are substantially different than what they were, say, in 1982 when I first became an Assistant, is that the cartel and the other

traffickers have so much cocaine available to them in the source countries that they can afford to lose quantities such as this.

Mr. RANGEL. And the price isn't going down.

Mr. KELLNER. The price has gone down.

Mr. RANGEL. It has?

Mr. KELLNER. Since 1982, certainly it has gone down, which indicates to me if you look at supply and demand that there is more involved.

The drugs are smuggled in by every conceivable fashion, by private plane and boat, commercial fishing vessels, containerized cargo. Most of the major shipments that I just testified to came in through containerized cargo, commercial aircraft, and body carriers through Miami International Airport. The methods are limited only by the smuggler's creativity.

We have found cocaine disguised as yams, in hollowed out furniture, behind false walls in containers, mixed in with cut flowers, in false compartments, specifically constructed for smuggling.

Over 90 percent of the narcotics cases brought in my District involved quantities in excess of those required for the imposition of minimum mandatory sentences.

Over the past four years, we have indicted more drug defendants than any district in the United States.

For the most part, the persons hired to transport these drugs and arrested through our interdiction efforts are not the owners of the drugs, nor are they the recipients. We recognized that indicting the mules, the drug pilots, the sea captains, the crewmen, was simply not enough. These defendants unfortunately, and for a variety of reasons, both economic and otherwise, can be easily replaced.

As a result, we developed a strategy of focusing our investigative efforts on the foreign criminal organizations supplying the cocaine and the corrupt officials who protect the shipments.

In August, 1986, a Miami Federal grand jury identified and indicted the members of the Medellin Cartel, who we believe are responsible for the majority of cocaine entering the United States. That indictment, and I've quoted parts of it in my submitted testimony, lay out graphically how they operate.

Additionally, during the past five years, we have indicted and convicted public officials, not only from Panama, but from a number of Caribbean Basin countries who are participating in the transportation of cocaine into the United States. These cases, again, which I detail in my written submission, graphically illustrate that the corruption problem is widespread. These indictments show, in my mind, that the problem of narcotics-related corruption extends far beyond any one country.

I would be remiss if I did not also point out that this country also has suffered from the corrupting influence of narcotics trafficking. In the past few years, Federal law enforcement in the Southern District of Florida has indicted and convicted, among others, the Deputy Chief of Police of the Key West Police Force, for providing protection for narcotics shipments smuggled through Key West; three members of the North Bay Village Police Force for providing protection to a narcotics shipment; 15 former City of Miami police officers for stealing and distributing hundreds of kilograms of cocaine; as well as federal law enforcement agents and prosecutors

for providing confidential information to traffickers, as well as trafficking themselves.

Congressman, when you sent me your letter, you asked me, "when and why it was decided to reverse the strategy of closing an ear to rumors and of cooperating with Noriega for our national interest." I can only answer from my limited perspective of first being an Assistant U.S. Attorney, and then United States Attorney for the Southern District of Florida. I am not privy to the global policy discussions or the strategic decisions that are made in this city.

From my perspective, there never was a strategy of closing an ear to the rumors. On the contrary, as the cases I describe in my written submission point out, whenever my office developed credible information involving a foreign official, it has been actively pursued, irrespective of the person's position on the political or ideological spectrum.

We have indicted officials from the Bahamas, Bolivia and a colony of Great Britain, our allies, and we have indicted officials from Cuba, with whom we have no diplomatic relations.

Unfortunately, drug trafficking and the corruptions spawned by narcotics proceeds cuts across political ideology and is reduced to the common denominator of the extraordinary dollars that can be made.

The Noriega indictment began, quite frankly, as many investigations do, from fragmented pieces of information that were ultimately developed into a prosecutable case. This happened through a combination of hard luck by DEA agents, who were the agents on the case, patience and, of course, a little bit of luck.

If I had to point to a single factor, a key factor, that ultimately led to the indictment, it would be the cooperation of the Costa Rican authorities. Not only did they aggressively litigate the extradition proceedings against Floyd Carlton, a major witness involved in the Noriega case, but they fully cooperated and coordinated a continuing investigation that resulted in the indictment of two Costa Rican officials who are being prosecuted by the Costa Rican authorities. And that, in my mind, is a very important point.

We indicted the officials, but we are not seeking their extradition, and the reason we're not is because the Costa Rican authorities want to prosecute those officials themselves, and we are providing the evidence that we have developed to them.

There is, however, a world of difference between rumor and the kind of hard evidence necessary to present to a grand jury for the return of an indictment.

Moreover, the evidence must be admissible at trial. Because of my obligations as United States Attorney, and my Assistant's obligations, we cannot indict on rumor and suspicion. We can only act on the legally sufficient evidence developed during the course of an investigation.

I may believe that a person is guilty of trafficking in narcotics, but my belief, really, is inconsequential. More importantly, for me to express my beliefs, because of my position, I think would be reckless and irresponsible.

The only way I comment on accusations of criminal conduct is through indictments and evidence presented in court. Hence, at

least insofar as my office is concerned, and me personally, the only strategy we had and continue to have is to develop legally sufficient evidence that would support an indictment that is admissible at trial.

In my testimony today, I have described, at least in my own mind, a bleak picture of narcotics corruption in this country and elsewhere. It would be unfair to conclude my testimony without mentioning the hard-working men and women in law enforcement in this country and elsewhere who daily put their lives on the line and suffer sometimes the ultimate in enforcing the narcotics laws.

All of us are deeply troubled by the damage narcotics trafficking is causing in this country and in other countries. It is truly, as you said, Congressman, a national security as well as a national health problem which should be the number one priority.

I have testified today about the supply side of the problem, because that's my job, prosecuting those persons who smuggle drugs into the United States. It is clear to me that dealing with the supply problem, whether through interdiction or prosecution, is not sufficient.

The plain fact is that this country is the largest consumer of narcotics in the world. I have read numerous articles, and editorials and op-ed columns, bemoaning the fact that since 1981 more than $21 billion of Federal funds has been spent on the narcotics problem, which is nowhere near being solved, a statement that I agree with.

This amount, however, is a mere pittance, compared to the Federal Government's annual trillion dollar budget. This is especially true considering the damage narcotics is causing domestically and internationally.

We must develop the national resolve to do whatever is necessary to cope with this crisis, and I do believe it is a crisis. This means, at least for me, domestically, developing an effective drug education program that should be mandatory at every school, increasing our drug awareness programs for adults, and increasing our enforcement of the drug laws.

Internationally, we must place the narcotics problem at the top of our agenda with foreign countries, consistent with our domestic priorities, by demanding that other governments stop providing safe haven for traffickers and enforce their own laws with respect to narcotics trafficking. And, every country has laws against narcotics trafficking.

We must be prepared to view as a hostile act the refusal of any country to honor these legitimate requests. Most importantly, we must allocate sufficient resources to effectuate these goals.

In conclusion, I believe that whatever we do, whatever changes in strategy are made, the problem is not going away overnight. The problem wasn't created over night. It took many, many years.

As a result, in my view, our efforts to resolve this problem will take many years before we can claim success.

In the meantime, we must persevere and continue to work on both the supply and the demand side. We cannot give up. It's too important to this country and to the people of this country.

Again, I want to thank you for inviting me to testify today, and I will be happy to answer any questions that you may have.

[The statement of Mr. Kellner appears on p. 33.]

Mr. RANGEL. Well, congratulations for doing your part of the job, and we do realize that you are restricted. You are not involved in establishing foreign policy, and, by the same token, you need admissible evidence to take before a grand jury.

I'm certainly glad that the Attorney General is not here to listen to your closing remarks as to what we need, because he's in charge of the overall thing, you know, he's in charge of the national drug abuse. As a matter of fact, he told me just over the weekend that by some time next week they would have developed a national strategy.

And, I hope that that might include, as you pointed out, an education policy, which we don't have, a rehabilitation policy, which we don't have, a foreign policy where our Secretary of State says exactly what you've said so eloquently, is that when you sign these bilateral and international agreements where growing drugs and trafficking drugs is against all type of laws, that they are going to be enforced, that we just don't certify them. And, I guess you would add that if we have a military that's protecting our national security, that they shouldn't be embarrassed if from time to time we ask them to help us out in protecting our borders.

But, anyway, maybe we are all not carrying our weight, but you certainly did carry your's.

Talking about rumors, you certainly heard rumors about who your suspect was, General Noriega.

Mr. KELLNER. Yes, we did. Yes, we did.

Mr. RANGEL. Even though you can't take rumors to the grand jury, you probably heard hints that he was a paid agent of the United States. Maybe not as United States Attorney, but, through street talk you heard that Noriega belongs to us.

Mr. KELLNER. Well, I read the same newspapers as you do.

Mr. RANGEL. That's right.

And, knowing your close connection with the Drug Enforcement Administration, it didn't come as a total surprise to you that this Administrator, Jack Lawn, as well as his predecessor, had sent letters of congratulations to Noriega, you heard about it if you hadn't seen the letter.

Mr. KELLNER. Yes. I'm aware of that too.

Mr. RANGEL. So, as you sought to fulfill your constitutional and legal responsibilities, were there any things that you had to do that was different from an ordinary case that you presented to the grand jury?

Mr. KELLNER. Well, certainly it was not an ordinary case in my office, primarily because, one, the people that I assigned to that case, which were the highest level people, supervisors in my office, who should be supervising, but instead, were doing this case, and I tried to assign the most experienced people I could because I recognized, even in the Southern District of Florida, I recognized who we were dealing with. I also maintained involvement in the case.

The DEA, the agents who worked the case, I think, did an extraordinary job, and it was being worked out of my office, and since the Chief Prosecutor on the case was my Chief Assistant, Dick Gregory, and he has his office across the Secretary's office from

mine, they were in there all the time, and we spent many late hours.

Whenever I needed anything, be it witnesses from other locations, be it documentary evidence, I got DEA cooperation, I must say, wholehearted cooperation and——

Mr. RANGEL. Up to now, with the exception of just giving added security and getting your best qualified and most trusted assistants, you are handling this as you would any ordinary case, up to now.

Mr. KELLNER. In that sense, it was handled as an ordinary case.

Obviously, I had to be doubly sure about the evidence. Leaks didn't help me. Stories didn't help me, but we tried to deal with it and we looked at it, quite frankly, as a person who we suspected and had good evidence down the road of committing crimes against the laws of the United States. And, in that sense——

Mr. RANGEL. Were you familiar with the letter of congratulations that had been sent in 1986 to Noriega by the Chief of the DEA?

Mr. KELLNER. Not in——

Mr. RANGEL. Not at that time?

Mr. KELLNER [continuing]. Not in particular. You know, it's an interesting problem.

Sometimes, and I have some of those cases in my office, unfortunately, where we go to bat for a confidential informant and he's cooperated, we've caught him red handed. He turns, he pleas and he cooperates, and sometimes you have to have these people on the street to make another case.

And, all of a sudden, after you've said all these nice things about his cooperation, and the judge should take it into account when he comes to sentencing, all of a sudden we suddenly find out that he's double dealing us, where he's giving us a load, and, lo and behold, he's bringing another load without telling us. That happens.

Mr. RANGEL. It happens.

Mr. KELLNER. It's unfortunate, and we get egg in our face because we get embarrassed.

Mr. RANGEL. It happens, but——

Mr. KELLNER. We are not dealing with priests and we're not dealing with rabbis. We're dealing with real people here——

Mr. RANGEL. It happens.

Mr. KELLNER [continuing]. And criminals.

Mr. RANGEL. It happens.

Mr. KELLNER. Criminals.

Mr. RANGEL. But, it's really not that shocking, is it, when it happens?

Mr. KELLNER. After spending six years doing this business, nothing surprises me anymore.

Mr. RANGEL. So, it really wouldn't be shocking to you, as it may be to other people, that the United States was dealing with a known drug dealer, even though we didn't have enough to indict him, but that's the nature of the business.

Mr. KELLNER. As I said, I have heard the rumors. There were cases that were in my office that I could say, this couldn't have happened without his involvement.

Mr. RANGEL. But, this is the Southern District of Florida type of rumors. I mean, we're talking about heavy rumors, State Department, CIA, DEA. I mean, the rumors that I'm talking about there was no question that we were dealing with a dealer, not enough for you to get—I mean, you are the only one that was able to put all of the pieces together to corroborate the evidence, and to get this international indictment, but we all knew what we were dealing with, didn't we?

Mr. KELLNER. And, Bob Merkle also.

Mr. RANGEL. Who is that?

Mr. KELLNER. Bob Merkle is the U.S. Attorney for the Middle District of Florida, who also returned——

Mr. RANGEL. Well, both of you.

That's why, when you knew that you had this rascal, you didn't feel that you had to check with the State Department or——

Mr. KELLNER. No.

Mr. RANGEL [continued]. Or to Jack Lawn, or Elliott Abrams.

Mr. KELLNER. Oh, no.

Mr. RANGEL. You just knew that you had just an ordinary suspect that you finally had enough information to take to the grand jury.

Mr. KELLNER. Oh, absolutely.

Obviously, Jack Lawn must have been aware, because his agents were making the cases, and I assume that the DEA agents reported up the line.

But, State Department——

Mr. RANGEL. That's an assumption, though.

Mr. KELLNER. Yes, it is.

Mr. RANGEL. Right.

Mr. KELLNER. When I briefed him at the end, he wasn't surprised.

Mr. RANGEL. Now let me ask your thought process as a lawyer. When you felt that you could get the indictment, was there any thought as to whether or not you could get the conviction? That's normally what prosecutors do, they get the indictment and then they start preparing for the trial.

Now, here we've got the de facto head of government of Panama. You didn't pick out your trial attorney at the same time, did you?

Mr. KELLNER. Yes.

Mr. RANGEL. You got—you picked your trial——

Mr. KELLNER. Oh, no. I have——

Mr. RANGEL [continuing]. You have your trial team ready to go?

Mr. KELLNER. Yes.

When we indict a case, I always assume, and I want my assistants to assume, that the case is going to go to trial.

Mr. RANGEL. Good. Now, share with us how you explain how you are going to trial with this case.

Mr. KELLNER. Well, at this point, I am fully aware that with Noriega in the position that he is in, I have very little hope of getting him back.

Mr. RANGEL. That's only as U.S. Attorney. You are part of a powerful governmental team now, and you've indicted, and you got your trial team ready to go. Where do you go from here to get the defendant?

Mr. KELLNER. Well, where we go from here is, well, one of the things I would do, and we are doing, is submitting our papers, as we normally do in a case involving a fugitive who is outside this country, for extradition.

In this particular case, I know that the extradition treaties between our country and Panama do not provide for the extradition of nationals, which means it is not required under the treaty.

Mr. RANGEL. So, that's out. What else do we have left?

Mr. KELLNER. Okay.

What we do also is, we can, and I have requested it, to put what's called red notices out. A red notice is a notice that goes to INTERPOL that the person who we have indicted is a fugitive, and that, if he is caught at the border he should be held for a provisional arrest warrant to be returned to the United States for our indictment.

This is a normal process, and——

Mr. RANGEL. When last has that worked?

Mr. KELLNER. Pardon me?

Mr. RANGEL. When last has something like that worked?

Mr. KELLNER. It happens. It does happen, actually more often than not. It may take a year or two years, but it happens.

The process that we go through, and I must say, because of the number of indictments that we've done of public officials in foreign countries, some of whom we caught red handed because they were taking the money in this country, but more often it was the result of information where we knew that they were not here.

One of the things that I thought about, and as my predecessor did, and I was an assistant of his, and he also happens to be a good friend of mine, should we do these things? Should our analysis be, well, let's not indict because the chances of getting the defendant back are slim and none.

Mr. RANGEL. Do you have that discretion?

Mr. KELLNER. Do I have the discretion? Well, I have the prosecutorial discretion to sign an indictment, and in that sense, if I can make that policy decision, I make the policy on who we indict in my District. I sign every indictment.

Mr. RANGEL. You mean that you could have just as easily rejected this because it was unlikely that the defendant would go to trial, and that would have been a discretionary decision?

Mr. KELLNER. It's within my discretion, yes, I would say so. I felt it would be wrong, but, certainly, a lot of factors go in to seeking the indictment.

In this particular case, and the others where we have indicted people who I do not believe at the present time will come back, I felt that the first obligation we had was to collect evidence of people who we believed were committing serious violations of the laws of the United States, that we present that to a grand jury when we believed we had sufficient evidence that we believed we could win it, be successful at trial, and then indict the person. And then, and only then, to seek his return.

And, I want to use one example of where that policy works, in my opinion. We have indicted the Cartel, we have named Jorge Ochoa, we have named Escobar, we've named Carlos Lehder.

When we indicted him in August of '86, and some of them had been indicted previously in my District, I wasn't so sure I could get him back, or any of them back, but I still went forward with the indictment.

Subsequent to that indictment, Carlos Lehder is returned to us.

Some day, hopefully, I will get back into this country the members of the Cartel, but if I took the position that I am not going to indict those people because they have safe haven in Colombia, then if there is a change in policy, I don't have an indictment, I don't have the evidence, and they go scot free.

Mr. RANGEL. Okay.

Mr. KELLNER. I think that's wrong.

Mr. RANGEL. Listen, we support you. It's a little different when you indict the head of government, because unlike those other cases there is no one for you to go to, to say send him back.

But, just assuming that they change governments and we find that we've got someone that's indicted, I just——

Mr. KELLNER. I'll give you an example.

Mr. RANGEL [continuing]. Want you to underscore, because I didn't know this, that once you have all of the information, and the witnesses, and the evidence to indict someone, but very little reason to believe that that person would be able to stand trial because they are not in this country, you have the discretion to decide not to take the case to the grand jury.

Mr. KELLNER. I have the across-the-board discretion in every case.

Mr. RANGEL. Let me take the second question then. Having made the decision to indict, how much discretion would you have to dismiss the indictment?

Mr. KELLNER. I'm trying——

Mr. RANGEL. Let me give you——

Mr. KELLNER [continuing]. To answer that.

Mr. RANGEL. Don't answer in a vacuum. Let me tell you, specifically, what I'm talking about.

Mr. KELLNER. Okay.

Mr. RANGEL. If another branch, another department of the State decides it is in our national interest for the indictment to be dismissed, just as a hypothetical, so that your defendant would go to Spain, is the proper procedure for the State Department to ask you to dismiss the indictment?

Mr. KELLNER. No. They can't ask me directly.

Mr. RANGEL. What's the law involved as it relates to that?

Mr. KELLNER. The law involved is that there are two people who can dismiss an indictment, myself, and I sign every dismissal, and I do dismiss cases. Sometimes we indict, find out that, you know, we've made a mistake, and it's unfortunate, but sometimes we do, or the——

Mr. RANGEL. This is no mistake.

Mr. KELLNER. No, no. I understand that. But, there are only two people, the way I understand it, who can dismiss an indictment, myself and the Attorney General.

Mr. RANGEL. I'm not going to ask any questions about that. The Attorney General can dismiss anybody's indictment?

Mr. KELLNER. That's my understanding of the law.

Mr. RANGEL. It's time for us to go into executive session on that one.

Mr. KELLNER. Well, you—Congressman, you know, it's a difficult position. Obviously, I'm not a free agent.

Mr. RANGEL. You tried it like you were.

Mr. KELLNER. Well, when it comes to that, I can do that. Nobody—well, what happens if somebody said to me, or the President of the United States said to me, you are not to indict for a variety of different reasons?

Mr. RANGEL. Good question. Act like I asked you.

Mr. KELLNER. That can happen. It didn't happen in this case. It's never happened.

Mr. RANGEL. I know.

Mr. KELLNER. But, presumably, well, I know that there is a procedure that can be followed, where if there is a national security reason why an indictment should not be brought——

Mr. RANGEL. Listen, what you have done is a classic law school case, and you have done it well, and now comes different parts of government saying, you've done your job, and we want to find out now whether they want to undo your job. They might say, you've been too good at what you do.

And the Assistant Secretary of State now wants to know what's the legality of having the charges dismissed against this fellow for our national interest, which is none of your business. This is not the Southern District. This is national, international interest.

And, he said he wasn't plea bargaining. He said he just wanted to find out what the law is. So, I'm with him. What is the law? He could have gone to the Attorney General and gotten the answer, right?

Mr. KELLNER. That's right.

Mr. RANGEL. Well, you've done your job, and we don't have a treaty with Panama.

Mr. KELLNER. Yes, we do, except——

Mr. RANGEL. It doesn't include him.

Mr. KELLNER. That is not unusual, and it also doesn't mean that they cannot send him back. What it means is that they are not required to under the treaty, and there is a difference.

Mr. RANGEL. My last question is, in the hypothetical you use where an informer is double dealing, would the testimony of an agent saying that, I don't know what you indicted him for, but I can tell you with me he's always been a straight shooter, would that be admissible as a part of the defense?

Mr. KELLNER. At sentencing I think it would be.

Mr. RANGEL. Not at sentencing. I mean——

Mr. KELLNER. I'm not sure.

Mr. RANGEL [continuing]. You've got your case, you've got your defendant, and the defendant tells you, listen, I'm not the enemy. I have been helping you. Ask anyone on your staff. I got letters from your office indicating that I'm a good guy.

But, all of a sudden they've decided to indict me, and I want to get evidence from your staff members to show that I've made more cases than they've indicted me for. Is that admissible?

Mr. KELLNER. It may be admissible as character evidence.

Mr. RANGEL. So, Jack Lawn just might be a character witness at this trial, if we ever get the defendant, right? It's possible.

Mr. KELLNER. That would be up to the defense counsel.

Mr. RANGEL. Mr. Fauntroy.

Mr. FAUNTROY. Thank you, Mr. Chairman.

I, too, want to commend Mr. Kellner for what I consider extraordinary courage and commitment to a task.

I am particularly grateful to you and those under your direction who, in fact, risked their lives to carry out your responsibilities, and, certainly, in the case of Haiti, you took enormous risks, and for that you are to be commended.

Mr. KELLNER. I wish you wouldn't say that much, especially with C-Span, because my wife listens and she's not happy when she hears those things about the courage.

Mr. FAUNTROY. Well, you are to be saluted for your honor and your courage in that regard.

Mr. RANGEL. We all believe that your courage hasn't been tested yet.

Mr. KELLNER. My courage is tested by coming to Washington and doing this for a whole day.

Mr. RANGEL. You are with friends in this part of Washington.

Mr. FAUNTROY. Have you made any attempts to obtain extradition of Colonel Paul, or Marie Delinois?

Mr. KELLNER. With respect to Colonel Paul, it is a little early. We indicted it last week, and we go through a normal process, and that process is, we send the indictment up to the Office of International Affairs in the Department of Justice, who are the experts on a variety of the treaties, the extradition treaties we have throughout the world.

They send back to us the requirements, or they tell us that you can't do it because the law doesn't provide for it.

And, that process will be going on now. It would be too early, simply because of the time period involved, because it was only last week.

Marie Delinois we did not, and that was a law enforcement reason, because I was aware at the time that we indicted Ms. Delinois that we had another case. And, I didn't want to at that point.

Mr. FAUNTROY. And, Antonio Paul?

Mr. KELLNER. That would be the same. It would be all of them.

Mr. FAUNTROY. All the same, right?

Mr. KELLNER. Uh-huh.

Mr. FAUNTROY. Do you have any indication that the government of President Menegar is going to cooperate with the U.S. Government?

Mr. KELLNER. No. They don't deal with me directly, so I wouldn't know.

Mr. FAUNTROY. Do you think that he is able to do any cooperation, even if he were willing?

Mr. KELLNER. I don't know the answer to it.

Mr. FAUNTROY. Okay.

Mr. KELLNER. You know, in my position, things we do, I don't think I would be here if I wasn't an eternal optimist that something could be done, because otherwise I would tear all my hair out.

Mr. FAUNTROY. Are you pursuing other evidence against Colonel Paul?

Mr. KELLNER. Well, again, that I can't comment on.

Mr. FAUNTROY. I see.

Mr. KELLNER. That's a matter of investigation. I can comment on the indictment, but nothing else.

Mr. FAUNTROY. In your investigation, you must have gotten some idea of the amount of power that he wields in Haiti. For example, in the indictment I was reading that—there's mention of a specific meeting between Jean Claude Paul and Antonio Paul in a parking garage of the Presidential Palace.

Now, one would assume that not everyone has access to the garage of the Presidential Palace. Some say he is more powerful than General Namphy or Ragala.

Have you found any other evidence that he wields such tremendous power?

Mr. KELLNER. No. I was aware, quite frankly, when we were pursuing this case, and when we indicted, that he was in charge of a battalion that had its headquarters behind the Presidential Palace, and, as you refer, one of the pieces of evidence that we had was that particular meeting where we had testimony about it.

But, subsequent to the indictment, maybe I should have known about the other things supposedly that he did, but I was not aware of the power that he wielded.

Mr. FAUNTROY. The narrative of the indictment also refers to an initially planned amount of 206 kilos of cocaine, which was then changed to 100 kilos. The 100 kilos that disappeared in the Bahamas, was there any follow-up investigation as to what happened to that missing 100 kilos?

Mr. KELLNER. The investigation is being followed up. Obviously, that would have been part of the evidence that we would have developed during the course of the indictment, and again, beyond that, I can't comment.

Mr. FAUNTROY. You do follow up on rumors from time to time.

Mr. KELLNER. We follow up on allegations.

Mr. FAUNTROY. Allegations.

Mr. KELLNER. The difficulty we have with rumors in the Southern District of Florida is that they come fast and heavy. And, if I tracked down every one of them, I'm not sure we'd be making any cases.

You know, it's a judgment call.

Mr. FAUNTROY. Yes.

Mr. KELLNER. Who is giving you the information? How close is the person giving you the information to the actual facts?

For example, in the Noriega case in my written submitted testimony, I relate that here in that case a load came in, 900 kilos, landed on I-75, which was a highway under construction at the time, and through the investigation of that particular load we found out about eight defendants.

One of the defendants happened to be a former Panamanian military officer who was the drug pilot. When he starts telling us about involvement of certain Panamanian officials, you tend to think, all right, first of all, we have him, he's been arrested, he's facing life, and maybe his information is accurate.

Now, even there, he told us that the information was more hearsay than anything else, but there was somebody else who had the information on it, Floyd Carlton. So, we went after him.

That is the type of information that, you know, we had a sense may be right. A lot of it is a judgment call, and sometimes we make mistakes.

People come in to us and say, we know this for a fact, but because of the type of person he is, because of his background, because of a variety of factors, we may discount it because we have to weigh what we are going to do against our resources. And, we make mistakes, because sometimes we should believe somebody that we don't.

On the other side, there are times that we go after wild goose chases because sometimes you believe somebody, because he sounds plausible, and it turns out he's making it all up. It's not an objective or a scientific calculation. It is really subjective, and a lot of it has to do with how the agents feel, and how the prosecutors who are handling the case that are dealing with this person feel about the veracity of the person you are dealing with. It's a very difficult thing.

One example, in the Cartel case we had one witness who unfortunately was killed by the Cartel, and we accused the Cartel in our indictment of doing that, and we found another witness. And, at first we were hesitant, but as he developed this witness not only convinced us he was telling the truth, but we convinced the judge in a particular case that he should be used as an expert witness on the Cartel because of his knowledge and because of his veracity. It's a very difficult, inexact science.

Mr. FAUNTROY. I understand.

Well, the military in Haiti has long been rumored to control the narcotics trafficking in and through Haiti. Have there been any other indictments or investigations by your office against Haitian military leaders, either under the current regime or during the Duvalier period.

Presently, are you looking at any allegations that other military leaders may have brought?

Mr. KELLNER. We have seen an uncomfortable or a disturbing trend, especially in the past few months, probably going back six months to a year, where increasing amounts of narcotics are being transshipped through Haiti.

Just two weeks ago, the Coast Guard, I believe it is the Coast Guard, interdicted a ship coming from Haiti that carried a 1,000 pounds of coke, and in all the time that I've been in the Southern District of Florida, I don't recollect a quantity of that size coming through Haiti.

Two weeks ago, we indicted a case involving —well, there is two indictments involving, I think, about 15 individuals, where the narcotics was being transshipped from Colombia through, first, Haiti, Cape Haitien and Cuba.

And again, I don't recollect in the past seeing that many that quickly.

With respect to your question of whether or not we are investigating officials, I really can't comment, because it would be commenting about an investigation.

I can tell you that there is a disturbing trend of more cocaine coming in through Haiti. We are seeing at the airport also people that we call mules, people who just carry. We're seeing, again, a trend of more mules, more body carriers through Haiti, coming from Haiti.

Mr. FAUNTROY. So, it is really not likely that Jean Claude Paul is the only one involved in this trafficking?

Mr. KELLNER. I leave that to you.

Mr. FAUNTROY. Oh, certainly.

Well, your indictment of Colonel Paul also mentions meetings with what you call transshipment—transportation coordinators?

Mr. KELLNER. Yes.

Mr. FAUNTROY. Only one of which is named, Mr. Quintana.

Mr. KELLNER. Yes.

Mr. FAUNTROY. At what point did he become an informant, and what charges were facing him as a result of his involvement in this or any other——

Mr. KELLNER. He was facing a narcotics charge.

Mr. FAUNTROY. I see.

Mr. KELLNER. A separate narcotics charge.

Mr. FAUNTROY. Has he been placed on the Witness Protection Program?

Mr. KELLNER. It's my understanding that he has, yes.

Mr. FAUNTROY. He has? I would think he would merit that.

Are the other nameless transportation coordinators in this indictment under investigation or indictment?

Mr. KELLNER. I can't comment on that.

Mr. FAUNTROY. I can't wait until this case starts.

How are you going to get them back?

Mr. KELLNER. Well, we go through the process, and we have hope.

You know, one of the things that we try to do—I don't look at just today. I look down the road. The evidence is there, and we hope to get him back, and we're prepared to try him when he comes back.

I know that the chances today are not real good, as it is with General Noriega, but we just have to do it. We have to bring these indictments. We have to make the statement, because we have the evidence, and I believe that's my job. And, we will continue to seek the return of these people to stand charges.

You know, one of the things I really am compelled to say is, under our system, these people are innocent. What I've done is, I've charged these people, I believe that there was sufficient evidence to present to the grand jury, but under our system of law these people are innocent until proven guilty. And, it's my job, not their's, to prove their guilt my job to prove to 12 citizens in the Southern District of Florida, that these people are guilty of the crime as charged. And, I've got to do that beyond a reasonable doubt, and I accept that burden, and I think that's the right burden.

I think sometimes we forget that when a U.S. Attorney holds a press conference and announces an indictment, it's only a charge, and that I have a substantial obligation that I have to fulfill and my assistants have to fulfill before that person goes to jail.

Mr. RANGEL. Let me tell you why that responsibility is so great, and I want to underscore the fact that we are proud of you in fulfilling your responsibility, but the reason your responsibility is so great, and why this case is so unique is that there is very little likelihood that your defendant is going to be brought to trial. And, you've said something that we haven't heard too much on this Hill, except I have said it, and, that is, that there is a presumption of innocence even if the person is a foreigner.

And, yet, I hear my colleagues in the Senate say that we know he's up to his eyeball in drug dealing, and we ought to chase him out of the country, and we ought to cut off aid to Panama, and we're doing business with a drug trafficker.

When I ask state, do you have evidence? No, allegations that are not corroborated.

I ask DEA? They say, no, allegations not corroborated.

I ask CIA, allegations not corroborated. I said, so you mean that we ought to get rid of the person and send him to Spain because some people from Southern Florida sat in a grand jury and they indicted. And, even this is the Secretary of State said, yeah. Well, she wasn't a lawyer, but, basically, you've got the only thing going for this whole Administration in getting rid of Noriega as I see an indictment.

Mr. KELLNER. Well, I must say, when you put it like that I'm not sure that I have the shoulders to hold that burden. I must say that——

Mr. RANGEL. How would you handle it if the Attorney General came to you and relieved you of this responsibility and told you that we've got to dismiss this darn thing?

Mr. KELLNER. I will face that if it happens.

Mr. RANGEL. No, you said, come on, I want to make it clear to my distinguished Republican friend that it was the witness of this outstanding prosecutor, that in his legal opinion only two people could dismiss the indictment, one being he and the other being your friend the Attorney General. And so, it wasn't for any other purpose that I phrased the question. Nor, did I get into how many other indictments could he dismiss.

Mr. GILMAN. I thank the Chairman for clarifying here.

Mr. RANGEL. Thank you.

And also, if for no other reason to invite you down here, you are clarifying the record that this indictment is not a political indictment, and it did not occur because of the Administration decision that this time Noriega has to go.

Mr. KELLNER. Absolutely not. We did that indictment—you made some comments about how important it is, and I must tell you that when we sat in our office and worked on this case we knew who we were dealing with. But, in all candor, there is no way that any of us would have been able to forecast the events subsequent to that.

Mr. RANGEL. Okay.

You also said that, in your opinion, or you had assumed that the DEA agents that did this outstanding investigative work would have relayed what they were doing to Jack Lawn.

I guess I would ask you to comment if you knew as a fact that you were doing with Floyd Carlton on June of 1987, while he was helping you make the case against Noriega, that in that same

month Jack Lawn, and the Panamanian Attorney General and Steve Trott, whom I assume you know——

Mr. KELLNER. Yes.

Mr. RANGEL [continuing]. Was in my office supporting Noriega. How would you explain that?

Mr. KELLNER. I don't—I can't explain that. You know, I don't know what went on.

There is a difference, when we are dealing with an individual, we look at him, we prepare the evidence, and I'm very, very happy that I don't have to deal with the problems of requiring—where you have to deal with a government, or a head of government, at the same type you are investigating him. I have the luxury. I don't have to deal with them at all, and I can just go forward with my investigation.

If I was sitting here in Washington, I'm not sure what I would do. I know that the case is going forward. I know that there have been breaks in the case. But, what do you do? Do you disclose that by saying, look, you are under investigation in the Southern District of Florida, I'm not going to deal with you anymore. I wouldn't—these are difficult questions for me that, thank God, I didn't have to answer.

Being in the Southern District of Florida, I can look at things, really, black and white, look at them really parochial. They are criminals. I believe they are, and they are going to be indicted, and I don't have to worry about having to deal with them on an international or foreign policy level.

I have to deal with the State and local authorities. I deal with the agents. I don't worry about the foreign policy implications of ongoing conduct of those affairs by our country with other countries. I don't make that decision.

Mr. RANGEL. You likened once an analogy of Noriega and in dealing with any other defendant that you turned around and make an informer. And, I have found in my experience as a prosecutor a hypothetical, that it could very well be that Noriega made a lot of cases for the DEA, but that he only turned over to the DEA those drug traffickers that were not paying him off.

Mr. KELLNER. Absolutely. It could be. I can tell you that one of the cases brought in my District, and in California, called Operation Pisces, substantial defendants, a lot of money was seized, a lot of cocaine was seized. The key defendants in that case were sent to us from Panama, and it's my understanding they seized substantial sums of money sitting in Panamanian banks.

Mr. RANGEL. How would you handle it if you had an FBI agent working directly with your office investigating a case, and found out that he was working with an informer that had been arrested and was a part of a bank robbing ring, and that he was turning in bank robbers that you were successfully prosecuting, but you also knew that he was in the business of robbing banks himself?

Mr. KELLNER. Well——

Mr. RANGEL. What would be your legal responsibility?

Mr. KELLNER [continuing]. Depending on the status of the investigation, certainly, he would——

Mr. RANGEL. Say that this has gone on for ten years.

Mr. KELLNER. Okay. Well, we've, unfortunately, had situations like that.

Mr. RANGEL. We have one with Noriega.

Mr. KELLNER. Where you deal, what we would do is, certainly, watch him, be careful of what information he's provided, but at the same time not alert the individual about what we were doing, because it could blow our entire investigation.

Mr. RANGEL. Even if you knew that your informer was actually committing crimes on a regular basis?

Mr. KELLNER. Well, it depends on what it is.

Mr. RANGEL. Let me say, suppose it is drug trafficking, and he's making big cases for you, and he is wheeling and dealing in drugs.

Mr. KELLNER. Do I have the evidence of that sufficient to indict him?

Mr. RANGEL. No, but you have enough evidence to know that he's wheeling and dealing.

Mr. KELLNER. Oh, I think then, at some point in time they would suspend him. I couldn't do anything else. I mean, the Office of——

Mr. RANGEL. I guess I'm getting to the case at point, and I can't believe that a professional is duped by Noriega, with all of the allegations that's around there, and yet, I believe that he did cooperate with DEA, and at the same time, you're going to send this guy who has cooperated with DEA to jail if you ever get a hand on him.

Mr. KELLNER. Hopefully.

Mr. RANGEL. Hopefully.

Mr. Gilman, this is the Ranking Republican Member and the expert on the Administration as well as the law on this subject matter.

Mr. GILMAN. That's a rash presumption, Mr. Chairman.

We welcome Mr. Kellner before the committee.

Mr. KELLNER. Thank you, Congressman.

Mr. GILMAN. Mr. Kellner, with regard to Haiti, what are your estimates of the amount of drugs that are entering our nation?

Mr. KELLNER. Okay.

Mr. GILMAN. Do you have any statistical information?

Mr. KELLNER. I do not at this point. It is too early. I think that this is a fairly recent development.

Before you came in, I detailed for Congressman Fauntroy the fact that two weeks ago we seized more than 1,000 pounds of cocaine coming from Haiti.

At least in my knowledge, personal knowledge, which goes back to 1982, that's the largest amount I've ever heard of coming from Haiti.

Mr. GILMAN. Is that one seizure?

Mr. KELLNER. Yes.

Mr. GILMAN. When was that?

Mr. KELLNER. About two weeks ago on a weekend. We indicted a case two weeks ago where the defendants were bringing drugs in through Cuba and Haiti, the same organization.

And again, I don't recollect in seeing the indictments in my office that I've seen a lot of that. I know that we've seen a lot more at the airport, body carriers coming in from Haiti carrying small amounts of cocaine.

Mr. GILMAN. Is there any evidence of any organized group in Haiti that's trafficking?

Mr. KELLNER. I can't comment on that right now.

Mr. GILMAN. You mentioned Cuba's involvement. Can you tell us what Cuba's involvement was in that seizure?

Mr. KELLNER. No. Excuse me, two different issues. The seizure was just a seizure.

Mr. GILMAN. You said there was some trafficking from Haiti through Cuba.

Mr. KELLNER. No, from Haiti to the United States, and from Cuba to the United States, by the same organization, who we arrested.

In that particular indictment, which I think was brought down about two weeks ago, the evidence that we developed and is detailed in the indictment dealt with certain cocaine shipments that were being flown into a Cuban Air Force base, and the same——

Mr. GILMAN. Cuban Air Force base?

Mr. KELLNER. Yes, I believe so, and other shipments that were coming in through Haiti, two different.

Mr. GILMAN. Is that one incident through the Cuban Air Force base?

Mr. KELLNER. Yes, it is. Yes, one incident.

Mr. GILMAN. Are there some Cuban military folks involved?

Mr. KELLNER. No. We had no indictment of any Cuban officials in that particular case.

Previously, I think it is 1983 under my predecessor, the Cuban Ambassador to Colombia was indicted, the former Cuban Ambassador to Colombia, a Vice Admiral in the Cuban Navy and a number of other Cuban officials, for permitting utilization of Cuban waters to reprovision ships in the transportation of methaquil and, I think, marijuana.

Mr. GILMAN. How long ago were those indictments?

Mr. KELLNER. 1983, I believe.

Mr. GILMAN. Are they still pending?

Mr. KELLNER. Yes, they are.

Mr. GILMAN. Have you had any recent incidents involving Cuba?

Mr. KELLNER. Other than the indictment that I mentioned, we have not indicted any Cuban officials recently.

Mr. GILMAN. With regard to the Noriega information, did you track back with relation to this indictment any of our prior information or knowledge of Noriega's involvement prior to your indictment?

Mr. KELLNER. Well, we had, again, a lot of supposition, a lot of allegations. Some of the material that is contained in the indictment goes backward beyond what we initially had.

And, the reason we could do that is because of the information we developed.

I was not told not to look at anything, and I was given whatever I wanted, but a lot of the information we develop is just that, hearsay, rumor, not sufficient to indict.

Mr. GILMAN. What was the earliest information that was available on Mr. Noriega's drug trafficking involvement?

Mr. KELLNER. Well, the concrete information, as opposed to the rumor, hearsay, 1984–85, that time frame.

Mr. GILMAN. And, was there concrete evidence at that time that he was involved?

Mr. KELLNER. Not sufficient. Let me rephrase that. I'm not sure that it was sufficient to introduce into a court. Again, it was more of the allegation type.

It really wasn't until we had Floyd Carlton that we had direct information, and he has already testified before Congress, as I said, that I'm aware of.

Mr. GILMAN. Have the intelligence agencies provided you with any information regarding Mr. Noriega's involvement?

Mr. KELLNER. They may have through DEA. They did not provide it directly to me, or to my assistants.

Mr. GILMAN. There were some allegations with regard to Mr. Noriega's involvement with the intelligence agency. Did you find any relationship in your review of the case?

Mr. KELLNER. That was not part of my case, and there was no need for me to find that out.

Mr. GILMAN. Your indictment states that, "Mr. Noriega harbored members of Colombia's Medellin Cocaine Cartel and laundered its money into Panamanian banks."

Mr. KELLNER. Yes.

Mr. GILMAN. Were the Colombian Medellin Cocaine Cartel actually living in Panama?

Mr. KELLNER. Yes. The indictment alleges that subsequent to the killing of the Minister of Justice, Lara-Bonilla, the Colombian government attempted, for a while at least, a concerted effort to track down these people, and, in essence, raised the heat by utilizing the military on these people.

And, as a result, they needed a safe haven, and the indictment alleges that they went, the Cartel, went to Panama during this time frame, which is subsequent to the assassination of Lara-Bonilla.

Mr. GILMAN. In other words, they headquartered themselves in Panama.

Mr. KELLNER. Yes, they did.

Mr. GILMAN. And, were directing all of their operations out of Panama.

Mr. KELLNER. Yes.

Mr. GILMAN. How many people were part of that Cartel?

Mr. KELLNER. Well, in the indictment, our '86 indictment lists a number of people as part of the Cartel, the Ochoa family, Jorge, Fabio and Juan David, Pablo Escobar, Carlos Lehder, a number of other people.

Mr. GILMAN. Were all in Panama?

Mr. KELLNER. I do not recollect exactly what the evidence shows of who was in Panama. I know that the information that was provided, and it's contained in the indictment, has Pablo Escobar, as well as Jorge Ochoa. They definitely were in Panama. How many of the other people, I can't tell you right now.

Mr. GILMAN. And, did you find a direct relationship between the Cartel members and Mr. Noriega?

Mr. KELLNER. The indictment alleges that there was a specific payoff to General Noriega to permit the Cartel to remain in Panama in safe haven.

Mr. GILMAN. The payoff was made by members of the Cartel?

Mr. KELLNER. Through intermediaries.

Mr. GILMAN. And, was that the sum of $400,000.00?

Mr. KELLNER. No. It was the sum of $4 million.

Mr. GILMAN. $4 million.

Mr. KELLNER. Yes.

Mr. GILMAN. And, you had the evidence of that actual payoff?

Mr. KELLNER. We have evidence that was presented to a grand jury.

Mr. GILMAN. As the result of the investigation of Mr. Noriega, did you find whether there were any other members of the Panamanian Government involved in narcotics trafficking?

Mr. KELLNER. Only one other person, who we understand to be a member of the Panamanian defense forces was charged in the indictment.

Mr. GILMAN. And, who was that?

Mr. KELLNER. The man's name is Luis del Cid.

Mr. GILMAN. And, what position?

Mr. KELLNER. I believe he was a Major.

Mr. GILMAN. In the Army?

Mr. KELLNER. In the Panamanian defense forces. The indictment alleges that he received a payoff from certain traffickers on behalf of General Noriega.

With respect to other people, I'm in a very difficult position. I can only speak based upon indictments that I have brought, and for me to speculate and discuss things that we felt that we did not have sufficient evidence to indict, I think would be wrong in my position as a U.S. Attorney.

Mr. GILMAN. Did you have the cooperation of the Panamanian banks in your investigation?

Mr. KELLNER. In this particular action, I don't believe so.

Mr. GILMAN. Did you seek their cooperation, and was it refused?

Mr. KELLNER. I don't believe we sought any help in this case from any Panamanian authorities.

Mr. GILMAN. To your knowledge, are any of the Panamanian banks involved with the Medellin Cartel?

Mr. KELLNER. Well, sir, the supply side of narcotics trafficking is really, there are two sides of it. One, of course, is the bringing of the cocaine into the United States.

But, there is a flip side to that, and, that is, the laundering of the enormous drug proceeds. Clearly, the cases that we have brought in the Southern District of Florida, beginning even before I came into the office in 1982, indicate that Panama and the Panamanian banks play a key role in the laundering of drug money. There are numerous indictments that indicate that the drug traffickers were shipping their money in a variety of different ways into Panamanian banks, and they were using Panamanian banks for a variety of reasons, the bank stability, bank secrecy and that's really the reasons.

Mr. GILMAN. Has there been cooperation by the Panamanian banks with our investigators as they try to track some of this laundered money?

Mr. KELLNER. Very limited, very limited.

Mr. GILMAN. Do you have any appraisal of how widespread the corruption may be in the Panamanian Government?

Mr. KELLNER. Again, it is very difficult for me to answer those questions, because of the fact that I haven't indicted it, and I am constrained because of my position, at least to start talking about other people who have not been charged.

Mr. GILMAN. I will yield further questions to the gentleman from Pennsylvania, Mr. Coughlin.

Mr. COUGHLIN. Thank you, Mr. Chairman.

I was unable to be here earlier, or to attend the briefing this morning, because we had the Panama Canal Commission before my other subcommittee. As you may aware, there is some unrest going on in Panama right at this very moment. In fact, the Panama Canal Commission was unable to reach its own headquarters in Panama this morning. The telephone service has been cut off and traffic on some of the roads has been interrupted.

I guess it can be said that—in a very real sense—the unrest is arising out of the indictment that you brought. Throughout the process leading to the indictment of this de facto head of state, did you ever notify or consult with anybody further up the line as to what was going on?

Mr. KELLNER. No. I mean, you make it sound like I'm a lunatic out there and just doing my own thing. No, that's not accurate.

Certainly, during the progress of the investigation, at least once in a meeting, and numerous times throughout the process, I called my people in the department about the status of it, and where we were, and I'd give them frank assessments of where we were at a particular point.

There came a point in the early part of this year where we sat down, the prosecutors who were working on the case, the agents working on the case and myself, and based upon the witness that we had presented to the grand jury, we felt that we had sufficient information to seek an indictment, that we were satisfied about the evidence.

At that point, I called the department. I told them that, and I said that we would prepare, as we do in many cases, a memorandum detailing what we had, the charges that we were contemplating and a draft indictment, which is what we did.

Mr. COUGHLIN. When you say department, you refer to the Justice Department?

Mr. RANGEL. Justice Department?

Mr. KELLNER. Oh, I'm sorry, yes.

Mr. RANGEL. We have a State Department too, which you'll be hearing from.

Mr. KELLNER. Yes. The Justice Department, we could not present it to anybody else. It was grand jury material, it's a violation of 6(e), and we presented the evidence that we had and a draft indictment, and it was reviewed.

Mr. RANGEL. Who do you present that information to in the department?

Mr. KELLNER. Well, this particular case I sent it directly to Bill Weld, the Assistant Attorney General, but he wasn't the only one involved.

Mr. COUGHLIN. And, to your knowledge, there were no consultations with the State Department at all?

Mr. KELLNER. At what point in time?

Mr. COUGHLIN. Any point in time.

Mr. KELLNER. Yes, there was.

Mr. COUGHLIN. Prior to the indictment?

Mr. KELLNER. Yes, there was.

When I came up to Washington with the draft indictment, and the prosecutor memo was reviewed inside the department with me, and with my assistants, and there was approval in terms that they felt that the evidence was satisfactory to go forward, and——

Mr. COUGHLIN. The State Department did?

Mr. KELLNER. No, no, no. I'm sorry, the Department of Justice did.

Mr. COUGHLIN. All right.

Mr. KELLNER. And, at some point during the same course of—the same time I was up here, I met with the State Department people, and said to them, the Department of Justice told them that we were prepared to go forward, that we believe, and the department believed that there was enough evidence.

Mr. COUGHLIN. And, the State Department, you say, was consulted at that time?

Mr. KELLNER. Was told.

Mr. COUGHLIN. The State Department was told at that time, that you were proceeding with the indictment?

Mr. KELLNER. Yes, sir, that's correct.

Mr. COUGHLIN. And, there was never any reaction back from the State Department one way or the other?

Mr. KELLNER. Not to me. If you mean a reaction, you can't do this——

Mr. COUGHLIN. Well, I mean, any formal communication——

Mr. KELLNER. No, no. Nobody said, don't do it.

Mr. COUGHLIN. Or instruction or——

Mr. KELLNER. No.

Mr. COUGHLIN [continuing]. Suggestions on how it should be handled.

Mr. KELLNER. There was one, yes, there was one——

Mr. COUGHLIN. I am referring to the State Department.

Mr. KELLNER. Yes. I'm talking about the State Department. There was one concern that was raised by the State Department, and that was in how we structured the RICO charge, Racketeering Influence and Corruption Organization charge. They were concerned that we were painting—that we were utilizing a legal tool, which is legally sufficient, by naming the enterprise, how we named the enterprise.

And, it was felt that by naming the enterprise, the Panamanian defense forces, as we have done with the City of Miami Police Force, as we have done with the Key West Police Force, as we have done with a variety of different types of governments where the enterprise does not accuse anybody, it is just the structure in which the indicted defendant utilizes to conduct his criminal activities.

It was the concern of the State Department that it would look to other people that we were accusing the Panamanian defense forces, which is not what we were trying to do.

It was reviewed by people in the Department of Justice in terms of legal sufficiency. It was felt that we could do it in a different way, achieve the same result, and that's what was done.

Mr. COUGHLIN. Mr. Chairman, I have some other questions, but I guess we have to go.

Let me just ask one other follow-up question, if I may.

In the course of your inquiries, did you discover or do you believe that there is widespread corruption in the Panamanian defense forces in terms of drugs?

Mr. KELLNER. Congressman, it's very difficult for me to answer because of my position. I feel that it's inappropriate for me to give you my beliefs because of my position as U.S. Attorney.

I think that—I strongly believe that the only way that I should comment on criminal charges, because I have the charging authority in the Southern District of Florida and presenting it to a grand jury, that the only way that I should do that is when I have legally sufficient evidence that I present to a grand jury and obtain an indictment.

And, for me to discuss evidence, rumors and allegations, I think, would be in derogation of my obligations as a U.S. Attorney.

You know, at times it is frustrating to do that, but I think it is legally correct, and it's the way that we ensure the independence of the criminal justice system, that it is not the tool of political forces, that it is separate and apart, and it deals with the evidence as it finds it, wherever it finds it.

And, I think that's the better way to deal with it.

Mr. COUGHLIN. All right. Thank you, Mr. Chairman.

Mr. RANGEL. Thank you, Larry.

You make it clear that your consultation with state is more of a courtesy than anything else.

Mr. KELLNER. Well——

Mr. RANGEL. I don't want to use——

Mr. KELLNER [continuing]. I think they have, you know—if I'm doing something that will have substantial impact, I think it is prudent to inform somebody that you are going to do this, not only for relationships, but you don't know whose life you are putting in danger.

Mr. RANGEL. Was that discussed, the safety of the Americans in Panama, the military, what the possible repercussions might be if the defendant declared marshal law? I meant that that's not things within your jurisdiction, but were they discussed at all?

Mr. KELLNER. That really isn't within my jurisdiction. There is a lot of speculation.

Mr. RANGEL. How would you respond to a Washington Post article yesterday that this deposed Panamanian President, Eric Delvalle said, "Noriega could live in a safe haven abroad if the United States would agree not to extradite him and face Federal drug charges in the United States"?

Mr. KELLNER. Every person who I indict I expect to have returned to stand trial, and I don't know if I could appropriately comment any further than that. You know, no one has talked to me about anything.

Mr. RANGEL. And, it's your testimony that if they wanted to talk there is only two people that, as far as you are concerned, that

they can get a legal answer from as it relates to this, that's you and the Attorney General?

Mr. KELLNER. The person who signs the indictment—who signed the dismissal.

Mr. RANGEL. That's you.

Mr. KELLNER. The Attorney General and myself, yes.

Mr. RANGEL. Right.

Mr. KELLNER. Extradition is something very different.

Mr. RANGEL. I know. I hope I didn't say extradition.

Mr. KELLNER. No.

Mr. RANGEL. I didn't mean to. I meant dismissal.

Mr. KELLNER. Yes.

Mr. RANGEL. In going through this very complicated procedure, do you have any recommendations to the Congress as to how we can make your job easier in the enforcement of the criminal code as it relates to narcotic violations?

Mr. KELLNER. I knew that question was coming. I must say that with the 1984 Comprehensive Crime Control Act, and the 1986 Anti-Drug Abuse Act, you have given us a lot of the tools.

I know that there are people in the department who are preparing other types of legislation that they feel is necessary in connection with precursor chemicals, a variety of other things, which are probably a good idea. I haven't seen it.

But, as far as the tools that you have given us now, I think that they are very, very good. I could not think off the top of my head of what else I could ask for on a wish list that would make it any easier for me.

Certainly, you know, you've given me the opening, and let me say it, the laws are very nice, and we greatly appreciate them, but there is a problem coming that is going to have to be addressed.

Whenever you pass a law, such as the 1986 act, that mandates certain prison sentences, those laws are not done in a vacuum, and they have a domino effect, and we're beginning to see it.

The first thing that happens, we are detaining pre-trial, many more defendants because they are facing higher sentences, the likelihood of them fleeing is greater.

The Southern District of Florida today, and this came from Stanley Morris, the Director of the Marshal Service, has 10 percent of all the pretrial detainees in the United States, out of 8,000 nationwide I think we have over 1,000.

Our MCC, the Metropolitan Correction Center, is 40 percent overcrowded. That's a serious problem.

The number of trials that my assistants must have every year are going up, and the reason they are going up, is that there is no advantage to pleading, because if you are caught with 500 grams of cocaine you are going to get five years, and 5 kilos is ten years. And, my policies are that I don't regularly bust the minimums, as there is a way of doing.

Hence, what you are going to find are more trials. My assistants are getting burned out. The trial courts are backing up. We're going to win those cases, a lot of them, and all of a sudden you are going to see a crunch in the prison population, and that has to be planned for.

You can't pass a law and then give it to the U.S. Attorneys and say, do it, without more resources. Because we can't, I mean, my assistants, I believe, are really working hard, and they are dedicated, they are hard working, but there is only so much that they can do.

Mr. RANGEL. Well, you are going to have to find some way, when you U.S. Attorneys get together for your conferences, to see how you can convey your wishes to the Congress without doing violence to the wishes of your Attorney General. And, there is a conflict there, that you cannot get political, but we have forced resources down the Administration's throat, and, clearly, we have seen that when they have decided that they don't want to use these resources, because they didn't ask for them, then we don't find the accountability and we don't find the programs being effective.

We know that you can't fight crime in a piecemeal way. You crowd the jails. You back up the court calendars. You burn out the U.S. Attorneys, the cooperation between local and State, you know, they don't want to give a nickel to help with local and State. They want partnership, but they don't want to pay for it. They want education, they don't want to pay for it. They want rehabilitation, they don't want to pay for it. They want international cooperation, they don't want to talk about it.

So, it's difficult, and the Congress, we don't have the answers, and it's difficult for us to do the right thing unless we talk with you people out there in the trenches. But, you are limited politically in what you can say.

You think of some way where your people feel comfortable in just sharing with us some of the day-to-day problems that you have, and we want to be your partners in government and relieve you of some of those things. But, you can't have an administration that just says, no, as relates to the budget, and then we ask you what do you want, and you say, well, I'll tell you what we need, but I can't get political. So, you find some way to do it, and I'll be glad to bring some of the members down there.

Do you have any professional views about the death penalty as a deterrent to violation of the Federal narcotic laws?

Mr. KELLNER. I think in certain instances it may be helpful. The problem that I have with the death penalty is——

Mr. RANGEL. It reduces prison population you know.

Mr. KELLNER. Well, I don't think that's an appropriate way of doing it, but the problem I have as a deterrent is that it would take such a long time to get it through the process, and who do you give the death penalty to? It's a very difficult——

Mr. RANGEL. And, you've admitted that even sometimes you make mistakes in indictments. Listen, you are an outstanding public servant, and I want you to know that if you have any ideas as to how your Congress can be more supportive and helpful, I want you to feel free in letting us know.

We will be monitoring these cases in Haiti, and you can tell us what other countries your investigations take you to, and we're prepared to be of support.

Mr. KELLNER. Thank you very much, Congressman.

Mr. RANGEL. Thank you.

[Whereupon, at 3:31 p.m., the committee was adjourned.]

OPENING STATEMENT

OF

THE HONORABLE CHARLES B. RANGEL

CHAIRMAN

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

HEARINGS ON

U.S. FOREIGN POLICY AND INTERNATIONAL NARCOTICS CONTROL

Wednesday, March 16, 1988

GOOD AFTERNOON

TODAY THE SELECT COMMITTEE BEGINS HEARINGS TO EXAMINE THE ROLE OF INTERNATIONAL NARCOTICS CONCERNS IN U.S. FOREIGN POLICY.

OUR WITNESS TODAY IS MR. LEON KELLNER, THE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF FLORIDA. MR. KELLNER, WE ARE PLEASED TO HAVE YOU WITH US TODAY, AND WE LOOK FORWARD TO YOUR TESTIMONY.

AT A SUBSEQUENT SESSION, WE WILL BE HEARING FROM THE STATE DEPARTMENT, THE DRUG ENFORCEMENT ADMINISTRATION, THE U.S. CUSTOMS SERVICE AND PRIVATE WITNESSES.

IN RECENT DAYS AND WEEKS, MR. KELLNER'S OFFICE HAS OBTAINED INDICTMENTS ON A VARIETY OF DRUG-RELATED CHARGES AGAINST GENERAL MANUEL NORIEGA, THE DE FACTO DICTATOR OF PANAMA, AND COLONEL JEAN-CLAUDE PAUL, A POWERFUL HAITIAN MILITARY OFFICER. GENERAL NORIEGA ALSO HAS BEEN INDICTED BY A FEDERAL GRAND JURY IN TAMPA ON DRUG TRAFFICKING CHARGES.

THE UNITED STATES GOVERNMENT SUPPORTS THE GOVERNMENT OF HAITI AND UNTIL RECENTLY STRONGLY SUPPORTED THE NORIEGA-CONTROLLED GOVERNMENT IN PANAMA. NOW OUR GOVERNMENT CLAIMS TO HAVE CREDIBLE EVIDENCE THAT TOP LEADERS OF THOSE TWO GOVERNMENTS ARE DRUG CRIMINALS WHO HAVE CAPITALIZED ON THEIR POSITIONS OF POWER

TO ENRICH THEMSELVES BY AIDING AND PROTECTING DRUG SMUGGLING TO THE UNITED STATES.

IN THE CASE OF GENERAL NORIEGA, REPORTS OF HIS ALLEGED INVOLVEMENT IN ILLICIT NARCOTICS ACTIVITIES HAVE APPEARED IN THE PRESS PERIODICALLY FOR YEARS. IN JUNE 1986, THE SELECT COMMITTEE HELD HEARINGS ON THE SERIOUS ALLEGATIONS OF NORIEGA'S DRUG DEALING AND OTHER ILLEGAL ACTIVITIES THAT WERE REPORTED AT THAT TIME IN THE NEW YORK TIMES. THE CHARGES IN THESE NEWSPAPER ACCOUNTS NEARLY TWO YEARS AGO -- CONSPIRACY WITH DRUG TRAFFICKERS, DRUG MONEY LAUNDERING, LARGE BRIBES IN EXCHANGE FOR PROTECTION OF ILLICIT DRUG OPERATIONS -- READ MUCH LIKE THE RECENT INDICTMENTS AGAINST NORIEGA. THESE STORIES CITED ANONYMOUS ADMINISTRATION OFFICIALS AS SOURCES. BUT WHEN ADMINISTRATION REPRESENTATIVES APPEARED BEFORE OUR COMMITTEE BACK THEN, THEY DENIED ANY GOVERNMENT POLICY TO PROMOTE THE STORIES AND CLAIMED THEY HAD NO EVIDENCE TO SUPPORT THE ALLEGATIONS. MOREOVER, THEY SAID IMPORTANT U.S. INTERESTS DEMANDED THAT OUR GOVERNMENT WORK CLOSELY WITH PANAMA. WHAT WERE THESE "IMPORTANT" INTERESTS? NARCOTICS CONTROL FOR ONE.

LESS THAN A YEAR AGO, A NUMBER OF HIGH-RANKING ADMINISTRATION DRUG ENFORCEMENT OFFICIALS ESCORTED THE ATTORNEY GENERAL OF PANAMA TO MY OFFICE IN THIS BUILDING AND ASKED ME TO PUBLICLY ENDORSE PANAMA FOR ITS COOPERATION WITH THE UNITED STATES ON ANTI-DRUG EFFORTS. NOW, SOME OF THESE SAME OFFICIALS CLAIM THEIR INVESTIGATIONS LED TO NORIEGA'S INDICTMENT.

ALL OF THIS RAISES A NUMBER OF QUESTIONS IN MY MIND. HOW DID OUR GOVERNMENT SUDDENLY OBTAIN THE EVIDENCE TO INDICT GENERAL NORIEGA, AND WHY DID IT TAKE US UNTIL NOW TO GET IT?

WHAT IS OUR FOREIGN POLICY TOWARD PANAMA AND HAITI, AND HAVE OUR NARCOTICS CONTROL EFFORTS BEEN SUBORDINATED TO "HIGHER" FOREIGN POLICY OBJECTIVES? WHAT MIGHT THOSE "HIGHER" OBJECTIVES BE? DO FOREIGN GOVERNMENTS IN THIS HEMISPHERE THAT OPPOSE COMMUNISM HAVE A "FREE PASS" TO ENGAGE IN DRUG TRAFFICKING TO THE UNITED STATES?

HOW COULD THIS ADMINISTRATION, WHICH HAS SELF-RIGHTEOUSLY TOLD AMERICANS AND FOREIGN GOVERNMENTS ALIKE TO "JUST SAY NO" TO DRUGS, IGNORE FOR SO LONG THE SERIOUS ALLEGATIONS OF DRUG TRAFFICKING BY FOREIGN GOVERNMENTS WE SUPPORT?

WHO IS IN CHARGE OF OUR FOREIGN POLICY TOWARD PANAMA AND HAITI? THE STATE DEPARTMENT? THE JUSTICE DEPARTMENT? OR NO ONE? DID JUSTICE CONSULT WITH STATE BEFORE SEEKING TO INDICT NORIEGA AND COLONEL PAUL? WERE THE INDICTMENTS AGAINST NORIEGA PART OF A U.S. PLAN TO FORCE HIM OUT OF OFFICE ONCE HE OUTLIVED HIS USEFULNESS TO OUR GOVERNMENT? SINCE IT NOW APPEARS THAT THE INDICTMENTS AGAINST NORIEGA ARE THE MAJOR OBSTACLE TO HIS DEPARTURE FROM PANAMA, HAS OUR PLAN BACKFIRED? WILL THE DRUG INDICTMENTS AGAINST NORIEGA BE PURSUED, OR WILL THEY BE SET ASIDE TO FACILITATE HIS EXILE TO A SAFE HAVEN?

WHAT IS OUR RESPONSE TO HAITI? DO WE DEMAND COLONEL PAUL'S EXTRADITION TO FACE CHARGES HERE? WHO DECIDES?

THE BOTTOM LINE IS WE WANT TO KNOW WHAT IS GOING ON. TO DATE, NO ONE FROM THE ADMINISTRATION HAS COME FORWARD TO ALLAY CONGRESSIONAL CONCERNS THAT OUR GOVERNMENT ROUTINELY CONDUCTS "BUSINESS AS USUAL" WITH FOREIGN GOVERNMENTS ENGAGED IN DRUG TRAFFICKING OR THAT THE NARCOTICS CONTROL EFFORTS BY CERTAIN AGENCIES OF OUR GOVERNMENT ARE BEING UNDERMINED BY OTHER PARTS OF OUR GOVERNMENT. WE ARE ALL PART OF ONE GOVERNMENT AND IT IS TIME FOR OUR GOVERNMENT TO COME FORWARD AND STATE CATEGORICALLY WHAT OUR POSITION IS. WE HOPE TO START GETTING SOME OF THE ANSWERS TO THESE QUESTIONS TODAY.

Department of Justice

STATEMENT

OF

LEON B. KELLNER
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

BEFORE

THE

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL
HOUSE OF REPRESENTATIVES

CONCERNING

PANAMA AND DRUG-TRAFFICKING

ON

MARCH 16, 1988

STATEMENT

OF

LEON B. KELLNER
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

BEFORE

THE

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL
HOUSE OF REPRESENTATIVES

ON

MARCH 16, 1988

Mr. Chairman and Members of the Select Committee

I want to thank you for inviting me to testify today concerning the international narcotics problem.

The narcotics problem is, far and away, the most serious crime problem facing this country today. Studies have shown that drug abuse and drug trafficking lay at the heart of much of the violent crime being committed in our major metropolitan areas. In the past month, because of indictments returned in the Southern District of Florida and through testimony at Congressional hearings, it is acknowledged that the narcotics problem is not simply a domestic problem but one of international magnitude. Those of us who enforce the law in the Southern District of Florida daily see the international dimensions of the problem.

The Southern District of Florida sits astride the major cocaine importation route into the United States. In the last fiscal year law enforcement in South Florida seized in excess of 30 tons of cocaine. This amount represents 62% of the amount seized in the United States. It is an unfortunate fact that even with the concerted efforts of federal law enforcement agencies in cooperation with local and state authorities, the Southern District of Florida continues to be the number one entry point for cocaine entering this country.

The seizures made in the Southern District of Florida are many times the quantity seized anywhere else in the country. Cocaine seizures in excess of one thousand pounds in our District are not uncommon. For example, in the past year we have seized

individual shipments of 8000 pounds (the largest recorded seizure), 6000 pounds and two of 3000 pounds. Moreover, the largest single cocaine seizure in the history of Chicago, 5000 pounds, was the result of a controlled delivery from Miami. The drugs are smuggled in every conceivable fashion -- by private plane and boat, commercial fishing vessels, containerized cargo, commercial aircraft and body carriers through Miami International Airport. The methods are limited only by the smuggler's creativity. We have found cocaine disguised as yams, in hollowed out furniture, behind false walls in containers, mixed in with cut flowers and in false compartments specifically constructed for smuggling. Over 90% of the narcotics cases brought in the Southern District of Florida involve quantities in excess of that required for the imposition of minimum mandatory sentences. Over the past four years we have indicted more drug defendants than any district in the United States.

For the most part, the persons hired to transport the drugs and arrested through our interdiction efforts are not the owners of the drugs nor the recipients. We recognized that indicting the mules, drug pilots, sea captains and crewmen was not enough. These defendants can be easily replaced.

As a result, we developed a strategy of focusing our investigative efforts on the foreign criminal organizations supplying cocaine and the corrupt officials who protect the shipments. In August, 1986 a Miami federal grand jury identified and indicted the members of the Medellin Cartel who we believe are responsible for the majority of cocaine entering the United

States. The indictment graphically details how the Cartel operates:

> "The Cartel operated to coordinate and consolidate production, distribution, and importation of cocaine into the United States. Through the Cartel, major cocaine organizations were able to pool resources, including raw materials, clandestine cocaine conversion laboratories, aircraft, vessels, transportation facilities, distribution networks, and cocaine to facilitate narcotics trafficking."

The indictment also describes the methods the Cartel uses to protect its business:

> "To protect its business operations and enforce its mandates, the Cartel corrupted public officials of foreign governments and utilized force and violence, including threats to, physical assaults on, and murders of informants, discordant employees, and opponents of the Cartel."

During the past five years we have indicted and convicted public officials from a number of Caribbean Basin countries for participating in the transportation of cocaine into the United States. These cases, which are listed below, graphically illustrate that the corruption problem is widespread:

(1) In United States v. Luis Arce Gomez, et al., Luis Arce Gomez, a colonel in the Bolivian Army and the Minister of Interior, Justice and Immigration, together with a number of other Bolivian government officials and other defendants were charged with violations of United States narcotics laws. The indictment alleges that Arce organized a protection racket requiring cocaine traffickers to pay monies to permit the distribution and exportation of cocaine to the United States. None of the former Bolivian officials have been apprehended. At one point, Arce was arrested in Argentina but was subsequently released.

(2) In United States v. Jamie Guillot-Lara, et al., four Cuban officials and other defendants were charged with violations of United States narcotics laws. Among the charged officials were the Ambassador to Colombia from the government of Cuba, the Minister-Counselor of the Cuban Embassy in Colombia, the President of the Cuban Institute of Friendship with the People, a Cuban Government agency, and the Vice-Admiral of the Cuban Navy. The indictment charged that quantities of marijuana and methaqualone were transshipped from Colombia through Cuba to the United States with the assistance of the four named Cuban officials. A number of defendants were arrested and convicted but the Cuban officials have not been apprehended.

(3) In United States v. Sammy L. Miller, et al., Sammy L. Miller, Chairman of the National Progressive Committee, a civic and political organization in the Bahamas, John Rolle, a senior official of the Bahamas Immigration Department and a third

individual were charged with violations of United States narcotics laws in connection with a scheme to import 800 pounds of cocaine from the Bahamas to the United States. The indictment charged that Miller and Rolle solicited and received cash payments totalling $100,000 in return for providing a safe, protected haven in the Bahamas to utilize as a drug smuggling base to import narcotics into the United States. The defendants, Miller and Rolle, were convicted after a trial.

(4) In United States v. Norman Saunders, et al., three officials of the Turks and Caicos government were charged along with another individual with violations of the United States narcotics laws in connection with a scheme to utilize the Turks and Caicos Islands as a transshipment and refueling point for cocaine laden aircraft flying from Columbia to the United States in return for payoffs to a variety of officials including themselves. The officials charged in the indictment were the Chief Minister of the Turks and Caicos Islands, the Minister of Commerce and Development and a member of the legislature. These officials were subsequently tried and convicted.

(5) In United States v. Fred Alfred Strachan, among the 17 defendants charged were two Bahamian officials -- an Immigration official and a Customs official. They were charged with accepting payments to assist the importation of cocaine to the United States through the Bahamas. They agreed to falsify immigration and customs documents, not check the identification of people who were part of the cocaine smuggling ring who traveled to the Bahamas, and not search the vessels used by the

cocaine smuggling ring. Ten defendants have been arrested and are pending trial. The remaining seven, including the Bahamian officials, are fugitives.

(6) In United States v. Etienne Boeren-Veen, et al, Etienne Boeren-Veen, identified as a "Commander of the Army" of Suriname, was charged, along with two other individuals with violations of United States narcotics laws. In this case, the defendants, in return for payment of $1 million per shipment fee, offered and promoted the use of Suriname as a protected haven for drug smuggling operations and as a base to land and refuel aircraft to be used in smuggling cocaine into the United States. The defendants were tried and convicted.

(7) In United States v. Manuel Antonio Noriega, et al., Manuel Antonio Noriega was charged along with fifteen other defendants with violations of United States narcotics laws. Noriega was charged with exploiting his official position as head of the intelligence section of the Panamanian National Guard and later as Commander-in-Chief of the Defense Forces of the Republic of Panama to receive payoffs for assisting and protecting international narcotics traffickers. This case is currently pending.

(8) In United States v. Jean Claude Paul, et al., Jean Claude Paul, a Colonel in the Haitian Army, was charged along with two other individuals, with violations of United States narcotics laws, in connection with a scheme to provide a protected airfield to transport cocaine owned by Paul and others from Haiti, through the Bahamas to the United States. This case is currently pending.

These indictments show that the problem of narcotics related corruption extends far beyond any one country. We have indicted corrupt officials from many of the major cocaine transshipment countries in the Western hemisphere.

I would be remiss if I did not also point out that this country has suffered from the corrupting influence of narcotics trafficking. In the past few years, federal law enforcement in the Southern District of Florida has indicted and convicted, among others, (i) the Deputy Chief of Police of the Key West Police Force for providing protection for narcotics shipments smuggled through Key West, (ii) three members of the North Bay Village Police Force for providing protection to a narcotics shipment, (iii) fifteen former City of Miami Police officers for stealing and distributing hundreds of kilograms of cocaine, as well as agents and officers of the DEA, Customs, FBI and Coast Guard for providing confidential information to traffickers as well as trafficking themselves.

Turning to your letter requesting my appearance today, you asked that I "clarify exactly how these [Noriega] indictments came about; [and] when the allegations became evidence".

I am limited in my answers concerning the Noriega indictment because first it is currently pending and second because the Southern District of Florida was responsible for only one of the indictments. Within these constraints and utilizing material already in the public record, I will try to describe how the case against General Noriega was put together. I can say without qualification that the investigation resulting in the

Noriega indictment was initiated and pursued without any consideration whatsoever to factors extraneous to law enforcement.

The Noriega investigation was conducted by agents of the Drug Enforcement Administration and began with a separate investigation having nothing whatsoever to do with Panama. The Drug Enforcement Administration was conducting an undercover investigation, utilizing an agent in an undercover role and a confidential informant. Undercover operations have proven to be a valuable law enforcement tool and many of the indictments detailed in my testimony are the result of successful DEA undercover operations.

During the course of the undercover operation, DEA agents received information about narcotics being smuggled into the United States through Texas to South Florida. DEA successfully placed a transponder on one of the suspected drug planes enabling DEA to seize the plane carrying a 900 kilogram shipment after it landed on a highway under construction on September 23, 1985. During the course of this investigation, it was learned that certain of the suspects had close ties to Panamanian government officials including General Noriega. As a result of the DEA investigative efforts, eight persons were indicted for smuggling this shipment into the United States. Among the eight was the pilot, Anthony Azpruia, a former captain in the Panamanian Defense Forces, and Floyd Carlton-Caceres. Seven of the defendants were arrested, plead guilty and cooperated. Only Floyd Carlton-Caceres was a fugitive. The former Panamanian

officer, Azpruia, told the agents and our prosecutor about allegations concerning the involvement of Panamanian officials in narcotics trafficking. However, the information he provided was hearsay. We learned that it was Floyd Carlton-Caceres who had the first hand knowledge. Shortly after the indictment, Carlton became aware that Federal law enforcement agents were seeking his return to stand trial in the Southern District of Florida and he approached the United States Embassy with a deal. The deal, in essence, was that in return for a dismissal of the outstanding charges, he would provide information about General Noriega, but would not testify in a United States Court. This arrangement was rejected for two reasons - (1) Carlton was not willing to testify and, as a result, the information he would provide could not be used to obtain indictments and (2) dismissal of all charges was unacceptable. Similar proposals are routinely rejected.

However, both the DEA agents working the case and my office recognized that Carlton was essential to any investigation of Noriega that could ultimately lead to criminal charges and so we continued to seek ways to have Carlton returned to the Southern District of Florida to stand trial on the pending charges. Ultimately, with the assistance of other defendants in the original case who had agreed to cooperate, Carlton was lured to Costa Rica where he was arrested and, after extensive court proceedings, he was extradited in December 1986, to the Southern District of Florida to stand trial. As the trial date approached in June 1987, a plea bargain was struck which provided that

Carlton was to cooperate with federal law enforcement agencies and testify at before grand jury and at trial. In return, he was allowed to plead to one conspiracy count whereby he faces a maximum exposure of twenty years imprisonment. By proceeding in this manner we obtained the results we wanted - the conviction and incarceration of a cocaine trafficker and his useful cooperation which resulted in the indictment charging Noriega. Thereafter, from June 1987 through February 1988, when the indictment was returned, the investigation proceeded with the collection of evidence, obtaining additional witnesses and insuring that there was a prosecutable case to present to the grand jury.

With respect to the second question - "when and why it was decided to reverse the strategy of closing an ear to 'rumors' and of cooperating with Noriega for the sale of our 'national interests'", I can only answer from my limited perspective of first being an Assistant United States Attorney and then United States Attorney for the Southern District of Florida. I am not privy to the global policy discussions and strategic decisions made in Washington.

From my perspective there never was a strategy of closing an ear to the "rumors". On the contrary, as the cases I described earlier show, whenever this office developed credible information involving a foreign official it has been actively pursued irrespective of the person's position on the political or ideological spectrum. We have indicted officials from the Bahamas, Bolivia and a colony of Great Britain, our allies, and

we have indicted officials from Cuba, with whom we have no diplomatic relations. Unfortunately, drug trafficking and the corruption spawned by narcotics proceeds cuts across political ideology and is reduced to the common denominator of the extraordinary dollars that can be made. The Noriega indictment began, as many investigations do, from fragmented pieces of information that were ultimately developed into a prosecutable case. This happened through a combination of hard work by the DEA agents, patience and, of course, a little bit of luck. If I had to point to a single key factor that ultimately led to the indictment, it would be the cooperation of the Costa Rican authorities. Not only did they aggressively litigate the extradition proceedings against Carlton, but they fully cooperated and coordinated a continuing investigation that resulted in the indictment of two Costa Rican officials who are being prosecuted by the Costa Rican authorities.

There is, however, a world of difference between rumor and the kind of hard evidence necessary to present to a grand jury for the return of an indictment. Moreover, the evidence must be admissible at trial. Because of my obligations as United States Attorney and my assistants' obligations, we cannot indict on rumor and suspicion. We can only act on the legally sufficient evidence developed during the course of an investigation. I may believe that a person is guilty of trafficking in narcotics but my belief is inconsequential. More importantly, for me to express my beliefs would be reckless and irresponsible. The only

way I comment on accusations of criminal conduct is through indictments and the evidence presented in a Court.

Hence, at least insofar as the United States Attorney's Office for the Southern District of Florida is concerned, the only strategy we had and continue to have is to develop legally sufficient evidence that would support an indictment and be admissible at trial.

In my testimony today, I have described a bleak picture of narcotics corruption in this country and elsewhere. It would be unfair to conclude my testimony without mentioning the hard working men and women in law enforcement who daily put their lives on the line enforcing the narcotics laws. All of us are deeply troubled by the damage narcotics trafficking is causing in this country and the other countries. It is truly a national security as well as a national health problem which should be the number one priority. I have testified today about the supply side of the problem because that is my job - prosecuting those persons who smuggle drugs into the United States. It is clear to me that dealing with the supply problem, either through interdiction or prosecution, is not sufficient. The plain fact is that this country is the largest consumer of narcotics in the world. I have read numerous articles, editorials and op-ed columns bemoaning the fact that since 1981 more than $21 billion of federal funds has been spent on the narcotics problem which is nowhere near being solved. This amount is a mere pittance compared to the federal government's annual trillion dollar

budget. This is especially true considering the damage narcotics is causing domestically and internationally.

We must develop the national resolve to do whatever is necessary to cope with this crisis.

This means, domestically, developing an effective drug education program that should be mandatory in every school, increasing our drug awareness programs for adults, and increasing our enforcement of the drug laws. Internationally, we must place the narcotics problem at the top of our agenda with foreign countries consistent with our domestic priority by demanding that other governments stop providing safe haven for traffickers and enforce their own laws against narcotics trafficking. We must be prepared to view as a hostile act the refusal of any country to honor these legitimate requests. Most importantly, we must allocate sufficient resources to effectuate these goals.

In conclusion, I believe that whatever we do, whatever changes in strategy are made, the problem is not going to go away overnight. Our efforts will take many years before we can claim success. In the meantime, we must persevere and continue to work on both the supply and demand sides. We cannot give up.

Again, thank you for inviting me to testify today and I would be happy to answer any questions you may have.

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